



UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY FOR COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Nov. 10, 2003

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In re Application :
Ansmann et al :
Serial No. : 09/931,670 : Petition Decision
Filed: August 16, 2001 :
Attorney Docket No.: H 2674A PCT/US :

This is in response to Petition from requirement for restriction under 37 CFR 1.144 filed March 19, 2003.

On December 12, 2002, a restriction requirement was made. Claims were directed to the following groups:

- I. Claims 11-14 and 18-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and a fatty acid N-alkyl polyhydroxyalkyl emulsifiers;
- II. Claims 11-13, 15, and 18-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and an alkyl ether sulfate emulsifier;
- III. Claims 11-13 and 16-22, drawn to compositions and uses thereof comprising a dialkyl ether, a cationic polymer, and a betaine emulsifier.

The examiner stated in the restriction that Groups I-III are unrelated because they do not have the same claimed limitations, they each require a different emulsifier, and the emulsifiers of each group neither anticipate nor render obvious emulsifiers of the other groups. The examiner further required an election of species within the elected group for search purpose.

Applicants elected Group II with traverse in the response filed December 16, 2002. Applicants' traversal is on the grounds that all the compositions have the same mode of operation, perform the same function, and provide the same effect. The examiner found the traversal non-persuasive for the reasons of record in the office action mailed December 12, 2002. On March 19, 2003, the present petition was filed.

Applicants urge that all groups are definitely related, they all possess the same mode of operation, i.e., they are all capable of being introduced/admixed into cosmetic composition for the purpose of imparting a pearlescent appearance to a cosmetic composition, they all perform the

same function, i.e., impart a pearlescent appearance to a cosmetic composition, and they all provide the same effect, i.e., pearlescence. Applicants also indicate that all groups are classified in the same class/subclass. Applicants further assert that the election of species is improper because that the examiner did not show that each species is "independent and distinct."

The restriction and applicants' argument have been carefully considered. The various emulsifiers recited in the groups are of diverse structures. The class and subclass for the different emulsion as set forth in Groups I-III are different. In addition to search in class/subclass 424/401, Group I requires search in class 507 subclass 116, Group II requires search in class 524 subclass 747, and Group III requires search in class 546 subclass 339. There is also additional search burden in literature search. Therefore, Groups I-III are independent and distinct, and there is burden of search. The requirements of restriction are met. With regard to the election of species, the examiner clearly indicated on the bottom of page 3 of restriction mailed December 12, 2002, and on page 2 of office action mailed on February 21, 2003, that the election is only for search purpose.

The restriction requirement is deemed proper. Applicants' petition is denied. Group II, Claims 11-13, 15 and 18-22 are to be examined.


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